

Employee Resignations: The Basics



In the world of employment law, terminations tend to steal the spotlight. But what about when the employee is the one ending the employment relationship?

Here is an overview of the law of resignation, and what employers need to know when they receive an employee's "two weeks' notice".

Resignation Notice Period

The resignation notice period or the amount of notice employees need to provide their employers when they are resigning, is intended to minimize disruptions to an employer's business and allow for the transition of duties and the hiring of potential replacements.

There is a common misconception that "two weeks' notice" is the default amount of resignation notice employees are required to provide. However, there are actually three potential sources to determine the amount of resignation notice an employee needs to provide to their employer:

1. **Legislation:** In many jurisdictions, including Alberta, Manitoba, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan and Yukon the minimum period of advance notice of their resignation that employees need to provide is provided in the employment standards legislation.
2. **Contract:** If an employee is not in one of the above jurisdictions, many employment contracts will contain a stipulated amount of notice that employees need to provide before their resignation.
3. **Common law:** If either legislation or contract does not provide an applicable resignation notice period, employers will need to turn to the common law. Just as there is an implied duty for employers to provide employees with "reasonable notice" of the termination of their employment, employees must provide "reasonable notice" of their resignation to the employer. Similar to reasonable notice of termination, what is considered reasonable will depend on the employee's position, responsibilities, length of service, and how long it will take for the employer to hire a replacement.

Waiving the Resignation Notice Period

Many employers, when they receive an employee's resignation notice, don't want the employee to continue working and will instead dismiss them immediately. However, this is not lawful and could amount to a wrongful or constructive dismissal.

When an employee provides their employer with a specified date for their last day of

work, the employer cannot unilaterally waive this notice period and dismiss the employee immediately, unless they continue to pay the employee their wages for the full resignation notice period, or their termination notice entitlement under either the common law or the applicable employment standards legislation.

If the employee has new employment lined up and would like to start their new job sooner, the employee and the employer can negotiate an earlier resignation date, but this cannot be unilaterally imposed by the employer. Similarly, if the employer would like the employee to stay on longer to wrap up a certain project or transition their tasks to a new employee, this is something that can also be negotiated with the employee.

The option to waive the resignation notice period and provide either pay in lieu or notice of termination should be specifically included as a term in the employment contract, to avoid any disputes or confusion.

Wrongful Resignation

Just as employees can sue their employers for wrongful dismissal, there is a cause of action available to employers for wrongful resignation. However, most employers don't elect to actually pursue a claim for wrongful resignation, as it can be difficult to demonstrate to a court that the employer has suffered any damages that can be compensated. Therefore, unless a key or very senior employee leaves an employer with very little notice, or the employee leaves for a competitor, a wrongful resignation action is unlikely to be a worthwhile endeavour.

Key Takeaways

- **Notice Period:** Employees must give notice before resigning, as per legislation, contracts, or common law.
- **Waiving Notice:** Employers can't immediately dismiss employees who have resigned; negotiation or termination notice is needed for earlier resignation.
- **Wrongful Resignation:** Employers can sue for wrongful resignation, but it's rarely done unless it involves key employees or competition issues.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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